

July 21, 1989

Cindi Malinick, Esq.  
Executive Director  
Save Our Heritage Organization  
P.O. Box 3571  
San Diego, CA 92103  
Dear Ms. Malinick:

Mission San Diego de Alcala

Thank you for your letter of July 17 regarding excavation for a proposed new parish hall at Mission San Diego. A review of the facts and the applicable law will put the situation in proper perspective:

The California Environmental Quality Act (CEQA) applies to projects where discretionary approvals are required (see Public Resources Code, Section 21080). While the term "discretionary project" is not defined in the Public Resources Code, State CEQA Guideline 15357 defines a discretionary project as one:

. . . which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances or regulations.

Generally, the issuance of building permits is a ministerial act. Municipal Code, Section 91.02.0303. A ministerial decision is one made by a governmental agency "involving little or no personal judgment by the public official . . . the public official merely applies the law to the facts as presented, but uses no special discretion or judgment in reaching a decision." State CEQA Guideline 15369.

In the case of a designated historical site, Municipal Code Section 26.02(e)(1), states that no permits shall issue for the "demolition, substantial alteration or removal of any building,

structure or site listed on the register of historic sites . . . without first referring the matter to the Historical Site Board." The Board then reviews the project and either approves or disapproves it. If it is disapproved, the matter goes to the City Council for review and, at the Council's option, the issuance of a permit may be delayed for a maximum of 360 days. After the 360 days has lapsed, the Council loses its jurisdiction over the matter and the issuance of the permit becomes a

ministerial act. (See Municipal Code, Section 26.02(E)(4).)

Since Mission San Diego de Alcala is a designated historical site (Number 113 on the register of historic sites), Mission authorities in 1980 brought the plans and the Environmental Impact Report (EIR) for approval and certification. The plans for a multipurpose building were approved and the EIR was certified. No building permit was applied for at that time, however.

In 1985, plans different from those approved in 1980 were submitted for the building. Mission authorities were then asked by City staff to provide supplemental environmental information, pursuant to Public Resources Code Section 21166, as the new plans apparently differed from those approved in 1980. Mission authorities chose to not submit a supplemental EIR ("SEIR"), as environmental review is only necessary for a public agency to approve a project, not to disapprove a project. Public Resources Code, Section 21002. The matter went before the Council, which upheld the Board's disapproval of the project. After the 360 days lapsed, the maximum time allowed by Municipal Code, Section 26.02, for discretionary action, the issuance of the building permit became ministerial.

You cite the case of City of Salinas v. Monterey County Historical Society as support for your position. Unfortunately, that case has facts which are totally distinguishable from those before us. Furthermore, the case is still at the trial stage, is not even final at that level and is thus of no precedential value.

In your final paragraph, you speak of the need for the City to "avoid possible litigation." It is not clear who you anticipate will sue whom, but you can rest assured that we will give our very best efforts and advice to the City to aid in the choosing of a proper and legal course of action.

Sincerely yours,  
John W. Witt  
City Attorney

JWW:RLJ:ALT:js  
MS-89-1